



## ENVIRONMENTAL PROTECTION AGENCY

[FRL-10787-01-OAR]

### California State Nonroad Engine Pollution Control Standards; Ocean-Going Vessels At-Berth and Commercial Harbor Craft; Requests for Authorization; Opportunity for Public Hearing and Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its Ocean-Going Vessels At-Berth regulation (2020 At-Berth Amendments). By letter dated September 27, 2022, CARB asked that EPA authorize these amendments pursuant to section 209(e) of the Clean Air Act (CAA). CARB has also notified EPA that it has adopted amendments to its Commercial Harbor Craft regulation (2022 CHC Amendments). By letter dated January 31, 2023, CARB asked that EPA authorize these amendments pursuant to section 209(e) of the CAA. This notice announces that EPA may hold a public hearing to consider California's authorization requests for both the 2020 At-Berth Amendments and the 2022 CHC Amendments, and that EPA is now accepting written comment on the requests.

**DATES:** *Comments:* Written comments must be received on or before May 1, 2023.

**Public Hearing:** The EPA may schedule a virtual public hearing and by separate **Federal Register** notice will announce whether such hearing will take place. EPA will hold a hearing only if any party notifies EPA by [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] expressing an interest in presenting oral testimony. If EPA schedules a virtual public hearing, then EPA will extend the written comment period as appropriate and include the new date in the

subsequent **Federal Register** notice. See **SUPPLEMENTARY INFORMATION** for further information on the tentative virtual public hearing.

**ADDRESSES:** You may submit your comments, identified by Docket ID No. EPA-HQ-OAR-2023-0152 (for the 2020 At-Berth Amendments) and by Docket ID No. EPA-HQ-OAR-2023-0153 (for the 2022 CHC Amendments), by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method).

Follow the online instructions for submitting comments.

- Email: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, OAR, Docket EPA-HQ-OAR-2023-0152 (2020 At-Berth Amendments) or Docket EPA-HQ-OAR-2023-0153 (2022 CHC Amendments), Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays). Instructions: All submissions received must include the Docket ID No. for one or both of these actions. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the process for this action, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing. EPA may hold a virtual public hearing for this action only if any party notifies EPA by [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to express interest in presenting the Agency with oral testimony. Please refer to Participation in Virtual Public Hearing in the

**SUPPLEMENTARY INFORMATION** section of this document for additional information.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Office of Transportation and Air Quality, Transportation and Climate Division (TCD), Environmental Protection Agency; Telephone number: (202) 343–9256; Email address: dickinson.david@epa.gov; or Kayla Steinberg, Office of Transportation and Air Quality, Transportation and Climate Division (TCD), Environmental Protection Agency; Telephone number (202) 564-7658; Email address: steinberg.kayla@epa.gov.

**SUPPLEMENTARY INFORMATION:**

A. Public Participation Tentative Virtual Public Hearing: The EPA may hold a virtual hearing if any party notifies the Agency that it wishes to present oral testimony (an opportunity to submit written comment exists regardless of whether a hearing is held, and such comment is not limited to a 5 minute time slot). In order to request a virtual public hearing, a party should contact a name listed in the **FOR FURTHER INFORMATION CONTACT** section above by **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives a request for a hearing, then the Agency will issue an additional **Federal Register** Notice with details of date and time, and how to register for the hearing in advance. In the event of a public hearing, EPA anticipates that each commenter will have no more than 5 minutes to provide oral testimony. In addition, the EPA recommends submitting the text of your oral testimony as written comments to the dockets as applicable. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

B. Public Participation Written Comments: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2023–0152 (2020 At-Berth Amendments), or Docket ID

No. EPA-HQ-OAR-2023-0153 (2022 CHC Amendments) at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section of this document. Once submitted, comments cannot be edited or withdrawn from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (including such content located on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epadockets>. Documents to which the EPA refers in this action are available online at <https://www.regulations.gov> in the docket for this action (Docket EPA–HQ– OAR–2023–0152; EPA-HQ-OAR-2023-0153).

EPA’s Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization *Federal Register* notices. This page will also include updates regarding this authorization proceeding. The page can be accessed at <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

#### **I. California’s Ocean-Going Vessels At-Berth Regulation, Prior Authorization, and New Request**

CARB first adopted the initial At-Berth Regulation, the Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a

California Port (2007 At-Berth Regulation), on October 16, 2008, and EPA granted California an authorization for that regulation in 2011.<sup>1</sup> The 2007 At-Berth Regulation applied only to container, refrigerated cargo, and cruise vessels visiting six California ports. The 2007 At-Berth Regulation required affected vessels to reduce emissions at berth by either plugging into shore power or using an equally effective compliance strategy (such as a capture and control system). Specifically, the 2007 At-Berth Regulation required fleets of container and refrigerated cargo vessels making 25 or more visits or cruise vessels making 5 or more visits to any of the six regulated ports to limit the operations and/or emissions of auxiliary engines while docked, reducing nitrogen oxide (NOx) and diesel particulate matter (PM) emissions at berth.

On September 27, 2022, CARB submitted a new authorization request to EPA for its amendments to the 2007 At-Berth Regulation the CARB Board adopted on August 27, 2020 (2020 At-Berth Amendments).<sup>2</sup> The 2020 At-Berth Amendments are designed to build upon the 2007 At-Berth Regulation by extending auxiliary engine emissions reductions requirements to additional categories of OGVs (roll on – roll off (ro-ro) and tanker vessels), adding emissions reductions requirements for tanker vessel auxiliary boilers, and expanding the applicability of the regulation to new ports and terminals.

The 2020 At-Berth Amendments establish, among other provisions, in-use emissions-related requirements that apply beginning January 1, 2023, with limited exceptions, to any person who owns, operates, charters, or leases any United States or foreign-flag OGV that visits a California port, terminal, or berth; any person who owns, operates, or leases a port, terminal, or berth located where OGVs visit; or any person who owns, operates, or leases a CARB approved emissions control strategy (CAECS) for OGV auxiliary engines or tanker auxiliary boilers.

---

<sup>1</sup> 76 FR 77515 (Dec. 13, 2011).

<sup>2</sup> CARB At-Berth Authorization Request, EPA-HQ-OAR-2023-0152.

## **II. California's Commercial Harbor Craft Regulation, Prior Authorizations, and New Request**

CARB approved its original CHC regulation on November 15, 2007. The original CHC regulation established in-use emission limits for in-use ferries, excursion vessels, tugboats, and towboats equipped with federal Tier 0 and Tier 1 propulsion and auxiliary marine engines. Owners and operators of these vessels were required to upgrade the engines to meet emission limits equal to or cleaner than federal Tier 2 or Tier 3 marine engine certification standards, according to a compliance schedule that was also set forth in the regulation. The compliance schedule was based on the model year of the original engine, its hours of operation, and the vessel's home port location. On December 13, 2011, EPA granted California an authorization for the original CHC regulation.<sup>3</sup>

CARB subsequently adopted the CHC amendments on June 24, 2010 (2010 CHC Amendments). The 2010 CHC Amendments set forth a variety of in-use requirements, including: extending the applicability of the CHC regulations to in-use crew and supply, barge, and dredge vessels that are equipped with Tier 0 and Tier 1 propulsion and auxiliary marine engines that operate within the Regulated California Waters; deleting certain exemptions of CHC engines registered in CARB's portable equipment registration regulation or permitted by local air pollution districts; defining swing engines and clarifying certain in-use engine requirements; adding replacement engine exemptions; expanding compliance extension options; and, allowing continued use of existing engines in certain circumstances. CARB's 2010 CHC Amendments that are applicable to both new and in-use engines allow the use of EPA or CARB certified off-road (also known as nonroad)<sup>4</sup> compression-ignition (CI) engines to comply with the new and in-use requirements for propulsion and/or auxiliary engines and set forth a deadline for owners

---

<sup>3</sup> 76 FR 77521 (December 13, 2011).

<sup>4</sup> The federal term "nonroad" and the California term "off-road" are used interchangeably.

and operators to submit “alternative control of emission plans.” On January 19, 2017, EPA granted California an authorization for the original CHC regulation.<sup>5</sup>

On January 31, 2023, CARB submitted its authorization request to EPA for further amendments to the CHC regulation that the CARB Board adopted on March 24, 2022 (2022 CHC Amendments).<sup>6</sup>

The 2022 CHC Amendments requirements include, among other provisions, that new harbor craft vessels may not be sold, offered for sale, leased, rented, or acquired unless each propulsion and auxiliary engine on the vessel meets performance standards that are equivalent in stringency to: (1) the most stringent federal marine engine standard (federal Tier 3 or Tier 4 marine standards) or California or federal off-road engine standards (California or federal Final Tier 4 off-road engine standards) that were in effect at the time any of the aforementioned actions occur and that are applicable to new engines with the same power ratings and displacements as the subject propulsion and auxiliary engines, and that (2) reflect the addition of a level 3 Verified Diesel Emission Control Strategy (VDECS), such as a verified diesel particulate filter (DPF). Newly acquired in-use harbor craft may not be sold, offered for sale, leased, rented, purchased or acquired, unless each propulsion and auxiliary engine on the vessel meets the performance standards applicable to new harbor craft as discussed above.

The 2022 CHC Amendments also include additional requirements for new, newly-acquired, and in-use short-run ferries and excursion vessels. The pre-existing CHC regulation required new ferry vessels capable of transporting 75 or more passengers to be equipped with propulsion engines certified to Tier 4 marine engine standards, or with propulsion engines certified to Tier 2 or Tier 3 marine engine standards and to also be equipped with the best available control technology (BACT) to reduce emissions of NOx

---

<sup>5</sup> 82 FR 77521 (January 19, 2017).

<sup>6</sup> CARB CHC Authorization Request, EPA-HQ-OAR-2023-0153.

or diesel PM to the greatest extent feasible. The 2022 CHC Amendments establish more stringent requirements as of December 31, 2022.

### **III. Clean Air Act Nonroad Engine and Vehicle Authorizations**

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209].<sup>7</sup> On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2)(A) of the (CAA), that EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.<sup>8</sup> EPA revised these regulations in 1997.<sup>9</sup> As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) “consistency” inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section

---

<sup>7</sup> 42 U.S.C. 7543(e)(2)(A).

<sup>8</sup> 59 FR 36969 (July 20, 1994).

<sup>9</sup> 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B.



209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).<sup>10</sup>

In order to be consistent with section 209(a), California’s nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California’s nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same “consistency” criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California “standards and accompanying enforcement procedures are not consistent with section 202(a)” of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.<sup>11</sup>

#### **IV. EPA’s Request for Comments**

As stated above, EPA is tentatively offering the opportunity for a virtual public hearing and is requesting written comment. Specifically, we request comment on whether California’s 2020 At-Berth Amendments and the 2022 CHC Amendments meet the criteria for a full authorization.<sup>12</sup> Specifically, we request comment on: (a) whether CARB’s determination that its standards, in the aggregate, are at least as protective of

---

<sup>10</sup> 59 FR 36969 (July 20, 1994).

<sup>11</sup> *Id.* See also 78 FR 58090, 58092 (September 20, 2013).

<sup>12</sup> EPA will separately and independently evaluate the 2020 At-Berth Amendments and the 2022 CHC Amendments and will issue separate final decisions for each.

public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

**Sarah Dunham,**

*Director,*

*Office of Transportation and Air Quality,*

*Office of Air and Radiation.*

[FR Doc. 2023-05439 Filed: 3/16/2023 8:45 am; Publication Date: 3/17/2023]